

Town of Amherst
Zoning Board of Appeals

SPECIAL PERMIT

The Amherst Zoning Board of Appeals hereby grants a Special Permit, ZBA FY2011-00014, to construct an eight (8) foot fence within the required side yard setback, under Section 6.29 of the Zoning Bylaw, as applied for by John Kuhn, at 147 Chestnut Street (Map 11D, Parcel 65, R-G Zoning District) with the following conditions:

1. The fence shall be located substantially in accordance with the approved "landscape plan" prepared by William Canon, dated May 7, 1996, stamped approved by the Zoning Board of Appeals on January 6, 2011.
2. The fence shall be built substantially in accordance with the document, Fence Elevations and Detail, stamped approved by the Zoning Board of Appeals on January 6, 2011.
3. The fence and/or any posts, shall not be taller than 8 feet.
4. The fence shall be maintained in good condition.
5. Any substantial change to the approved plans shall be submitted to the Zoning Board of Appeals for review and approval at a public meeting.

Hilda Greenbaum, Acting Chair
Amherst Zoning Board of Appeals

DATE

Town of Amherst
Zoning Board of Appeals - Special Permit

DECISION

Applicant/owner: John Kuhn
147 Chestnut Street

Date application filed with the Town Clerk: November 5, 2010

Nature of request: To construct an eight (8) foot fence within the required side yard setback, under Section 6.29 of the Zoning Bylaw

Address: 147 Chestnut Street (Map 11D, Parcel 65, R-G Zoning District)

Legal notice: Published on December 22, 2010 and December 29, 2010 in the Daily Hampshire Gazette and sent to abutters on December 21, 2010

Board members: Hilda Greenbaum, Eric Beal, Tom Ehrgood
Town Staff: Jeffrey Bagg, Senior Planner & Bonnie Weeks, Building Commissioner

Submissions:

- Project Application Report, December 23, 2010;
- ZBA application, filed with the Town Clerk on November 5, 2010;
- Landscape Plan prepared by William Canon, dated May 7, 1996, with the proposed fence location;
- Existing conditions photograph, received January 6, 2011;
- Fence Elevation and Detail, received January 6, 2011;
- Letter from Edward Mientka, dated January 2, 2011.

Site Visit: January 4, 2011

Hilda Greenbaum, Eric Beal and Tom Ehrgood, and the Senior Planner met with the applicant onsite. The following was observed:

- The location of the property on the south side of Chestnut Street containing an existing single family dwelling and detached shed.
- The approximate location and length of the proposed fence extending from the edge of the shed northward towards an existing mature evergreen tree.
- The location of the east property line and the adjacent residential property containing a single family dwelling, detached shed and RV.

Public Hearing: January 6, 2011

The applicant, John Kuhn, presented the application. His statements are summarized as follows:

- The request is for a Special Permit to allow a fence that is approximately eight (8) feet in height on or at the property line.
- Section 6.24 of the Zoning Bylaw allows fences to be six (6) feet tall regardless of location, but requires that any fence taller than six (6) feet be setback a distance equal to its height.
- Section 6.29 of the Zoning Bylaw allows the Zoning Board of Appeals to approve a fence that does not comply with Section 6.24 of the Zoning Bylaw.

- The height of the fence will be 1 foot 6 inches taller than allowed and noted that the posts may be as tall as eight (8) feet in height. The length of the fence will be 24 feet on or adjacent to the east property line. The fence will extend from the existing shed to the north toward an existing evergreen green tree, as shown on the submitted site plan.
- A large pine tree along the property line was removed for safety issues to prevent tree branches from falling onto the existing dwelling.
- He referred to a letter from Edward Mientka, dated January 2, 2011, owner of the abutting property immediately to the east and directly adjacent to where the fence is to be located. The letter indicates support for the proposed taller fence. The fence will be constructed of cedar with a decorative feature along the top. The fence will be allowed to weather naturally.

Mr. Ehrgood noted that the Zoning Board of Appeals may authorize a fence taller than six (6) feet “*for compelling reasons of safety, aesthetics, or site design*”. Mr. Kuhn responded that the removal of the pine tree was done for safety reasons; to prevent large branches from falling on the shed and/or house. However, the reason for the fence is aesthetic. He noted that there was a fence in this location at one time, but that the removal of the tree created a large opening between abutting properties. The eight (8) foot fence will provide both properties with additional privacy and will create a planting area for both. The fence will be an aesthetic benefit to both properties because it will be constructed of cedar, which is generally considered attractive, and it includes a decorative feature along the top. He noted that this is also an issue of site design, given the small lots in the R-G Zoning District.

Mr. Beal asked about the fence location relative to the property line and noted that the Zoning Bylaw would ordinarily require a fence taller than six (6) feet to be setback a distance from the property line equal to its height which in this case is eight (8) feet. Mr. Kuhn responded that the fence will be essentially on the property line. However, he noted that the request is to allow the fence immediately adjacent to the property line because an eight (8) foot setback would reduce significantly usable yard area on his property.

Ms. Weeks asked on which property the tree was located. Mr. Kuhn noted that the adjacent property owner had planted the trees, but that he paid for the removal of the tree.

No members of the public spoke regarding the application.

Ms. Greenbaum MOVED to close the evidentiary portion of the public hearing. Mr. Beal seconded the motion and the Board VOTED unanimously to close the public hearing.

Public Meeting:

Pursuant to Section 6.29 of the Zoning Bylaw, the Board finds that the proposed eight (8) foot fence provides for the following “*compelling reasons of safety, aesthetics, or site design*”:

- Aesthetics: Based on the photograph showing existing conditions, the fence will enhance the aesthetics for both properties by providing privacy screening. Based on the Fence Elevation and Detail, it is an attractive screen for both properties and will provide an area for both parties to plant along the fence, if they desire.

- Site design: Based on the location of the property within the R-G Zoning District, the dwellings on each property abut closely due to the small lot size and minimal setback requirements. The removal of the tree created a substantial exposure and the fence provides a necessary privacy screening between the two (2) properties. The eight (8) foot setback would reduce the usable yard area on the applicant's property.
- The written approval from the adjacent property owner is compelling evidence that the fence will be both an aesthetic enhancement for both properties and is in harmony with the design and layout of both properties.

Specific Findings:

The Board found under Section 10.38 of the Zoning Bylaw, Specific Findings required of all Special Permits, that:

10.380 & 10.381 – The proposal is suitably located in the neighborhood in which it is proposed; and, is compatible with existing uses and other uses permitted by right. The proposal is suitably located in the neighborhood because cedar fences for screening purposes are common and typical in this neighborhood. This fence is replacing an earlier one in the same location and except for the property immediately to the east, the proposed fence will not be clearly visible to other property owners or from the street. The height of the fence is compatible with both residential properties because a lower fence would not provide adequate privacy screening.

10.382, 10.393 & 10.385 – The proposal would not constitute a nuisance due to air and water pollution, flood, noise, odor, dust, vibration, lights, or visually offensive structures or site features; provides protection of adjacent properties by minimizing the intrusion of lighting, including parking lot and exterior lighting; and, the proposal reasonably protects the adjoining premises against detrimental or offensive uses on the site, including air and water pollution, flood, noise, odor, dust, vibration, lights or visually offensive structures or site features.

Based on the fence Elevation and Detail, the fence is an attractive screen for both properties and will provide an area for both parties to plant along the fence, if desired. The eight (8) foot fence will reduce the nuisances due to noise or lights by creating a privacy screen between the two (2) properties. The Board noted that the adjacent property owner submitted a letter in support of the fence, and found that the fence will not be detrimental to the adjacent property owner.

10.395 - The proposal does not create disharmony with respect to the terrain and to the use, scale and architecture of existing buildings in the vicinity which have functional or visual relationship thereto. As shown on the Fence Elevation and Detail, the fence is attractive and will serve as a privacy screen for both property owners.

10.398 – The proposal is in harmony with the general purpose and intent of the Bylaw and the Master Plan. The Board found that the proposal is in harmony with the general purposes of the Zoning Bylaw as it benefits both property owners, consists of an attractive design and is compatible with uses expected in a residential neighborhood.

Public Meeting – Zoning Board Decision

Mr. Beal moved to APPROVE the application with conditions. Mr. Ehrgood seconded the motion.

For all of the reasons stated above, the Board VOTED unanimously to APPROVE the request for Special Permit, ZBA FY2011-00014, to construct an eight (8) foot fence within the required side yard setback, under Section 6.29 of the Zoning Bylaw, as applied for by John Kuhn, at 147 Chestnut Street (Map 11D, Parcel 65, R-G Zoning District) with conditions.

HILDA GREENBAUM

ERIC BEAL

TOM EHRCOOD

FILED THIS _____ day of _____, 2011 at _____,
in the office of the Amherst Town Clerk _____.

TWENTY-DAY APPEAL period expires, _____ 2011.

NOTICE OF DECISION mailed this _____ day of _____, 2011
to the attached list of addresses by _____, for the Board.

NOTICE OF PERMIT or Variance filed this _____ day of _____, 2011,
in the Hampshire County Registry of Deeds.